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SUBJECT: AD HOC COMMITTEE ON MEASURES TO ELIMINATE
INTERNATIONAL TERRORISM MEETS JUNE 29 TO JULY 2

¶1. (SBU) SUMMARY: The Ad Hoc Committee on Measures to Eliminate International Terrorism met from June 29 to July 2 to discuss the Comprehensive Convention on International Terrorism (CCIT). While all countries publicly expressed the belief that terrorism must be condemned and professed the desirability of bringing the negotiations to a conclusion in the near future, the continued refusal of OIC countries to accept the text from other counterterrorism conventions on the exclusion of the acts of armed forces from the scope of the Convention (e.g. Article 18) and the desire to exclude the actions of national liberation movements from the scope of the convention prevented any meaningful progress, as they have for the past eight years. The OIC reiterated its previous alternative proposal on this provision and publicly remained steadfast that groups under foreign occupation and fighting for their right to self-determination should be exempted from the CCIT. In private, Pakistan indicated during bilateral consultations that there may be an opportunity to reach a compromise with a number of OIC countries.

¶2. While the 2007 Coordinator's proposal did not receive strong support during the plenary or informal consultations, many delegations outside the OIC, including most EU countries, India, Russia and China, have signaled a willingness to accept the 2007 Coordinator's proposal as a way forward. The USG advocated a return to the 2002 text, which was based on a formulation used in five other counterterrorism conventions, and signaled discomfort with the 2007 proposal while not formally rejecting it. Both publicly and bilaterally, India stressed their desire finally to complete work on the CCIT (their initiative) in the near future. Despite the lack of true progress, at the closing session the Chair, the Coordinator and many delegations stated that momentum had been generated and that the CCIT could soon be agreed upon, perhaps as soon as this fall. END SUMMARY.

¶3. (SBU) ACTION REQUESTED: USUN expects considerable pressure on the USG, particularly by India, between now and this fall's UNGA session to take constructive steps to move the process forward, either by embracing the 2007 Coordinator's text or by proposing an alternative. USUN requests that the Department assess whether the benefits of concluding the proposed convention are worth additional USG concessions. If so, we request Department advice whether a further compromise along the lines of the 2007 Coordinator's proposal is consistent with protecting fundamental USG interests, or if the USG is prepared to suggest another approach that might similarly resolve the pending impasse in an acceptable manner. There will be a Perm Rep-level session in mid-August in New York with India to discuss bi-lateral cooperation at the UN, and the Indians have made clear that the CCIT is their top priority. USUN requests guidance in advance of those meetings, including any new Department proposals, that might provide a way forward.

BUREAU AND US DELEGATION

¶4. (U) The Bureau for the meeting was:

Rohan Perera (Sri Lanka), Chairman
Maria Telalian (Greece), Vice-Chairperson
Ana Cristina Rodriguez-Pineda (Guatemala), Vice-Chairperson
Namira Nabil Negm (Egypt), Vice-Chairperson
Andi Xhoi (Albania), Rapporteur

¶5. (U) The USG was represented by:

Clifton Johnson, Assistant Legal Adviser for Law Enforcement and Intelligence (L/LEI)
Mary McLeod, Legal Adviser, USUN
James Donovan, Deputy Legal Adviser, USUN
Peter Gutherie, Attorney-Adviser, L/LEI
Timothy Schirmer, Intern, USUN

OIC GROUP

¶6. (U) Syria, on behalf of the OIC Group, spoke first at the June 29 morning plenary session, reiterated the previous (2002) OIC proposal on the scope of the draft proposal and stressed the need to make "a clear distinction between terrorism and the exercise of legitimate right of peoples to resist foreign occupation." As in the past, Syria said that the OIC Group "supports a comprehensive strategy to combat terrorism that must address the root cause of terrorism, including unlawful use of force, aggression, foreign occupation, festering international disputes, denial of the right of peoples living under foreign occupation to self-determination, political and economic injustices and political marginalization and alienation." Qatar, Egypt, Morocco and Saudi Arabia seconded the OIC statement.

¶7. (U) At the June 30 plenary, Egypt repeated its call for a high-level conference on international terrorism (HLCIT) prior to conclusion of the CCIT to discuss counterterrorism issues, including the definition of terrorism, root causes of terrorism, the interplay of terrorism and human rights, and so on. Syria chimed in that such a conference would be an important step toward adoption of the CCIT.
Europe

¶8. (U) The Czech Republic spoke on behalf of the European Union. The EU indicated that it supported reaching agreement on the CCIT based on the coordinator's proposal of 2002 or the coordinator's proposal of 2005 (A/59/894) (note: the text of Article 20 of the 2005 proposal is the same as the 2002 Coordinator's text for Article 18), but were "willing to examine any legally sound and well-founded proposals," and looked forward to an exchange of views with other delegations "including with regard to the coordinator's 2007 package proposal," which they were prepared to "consider seriously." As in the past, they said they would only support a HLCIT once the text of the comprehensive convention was agreed upon. Comment: The UK and France have indicated to us that they oppose the 2007 Coordinator's proposal, and appear to be blocking a EU position in support of the proposal.

¶9. (U) Switzerland expressed the view that although the coordinator's proposal "still has room for improvement, it provides a basis for compromise."

¶10. (U) Liechtenstein, noting the concerns expressed by some delegations about the coordinator's 2007 proposal, asked whether other delegations agreed to its assumption that the proposal did not change the obligations of states under international humanitarian law, and that while it was important to protect the "integrity" of international humanitarian law, "integrity" was different from "uniformity."

WHA

¶11. (U) Mexico spoke on behalf of the Rio Group. While condemning terrorism, they stressed their "unequivocal conviction that the measures to combat international terrorism must comply at all times with international law, including international human rights law and refugee law." They expressed disappointment over the fact that an agreement

has not yet been reached, due to differences over Article 18, and said it was their understanding "that the moment has arrived to reach a solution which reflects the common expectations and interests of all delegations." With respect to the timing of a HLCIT, they echoed the EU and U.S. positions in advocating conclusion of the CCIT prior to convening a conference.

¶12. (U) Cuba expressed support for the OIC's position that those parties fighting for their right to self-determination be exempted from the coverage of any definition or convention adopted by the Committee. Cuba favored holding the HLCIT prior to adoption of the CCIT.

¶13. (U) Ecuador summarized the actions taken by their government to combat terrorism, specifically stricter enforcement and regulations related to terrorist financing and drug trade. They also expressed the need for the Committee to address the victims of terrorist attacks, not just the perpetrators. Ecuador also explicitly expressed support that UN actions taken to combat terrorism be taken at the regional level.

ASIA

¶14. (U) The Democratic People's Republic of Korea made a thinly veiled attack on the United States. They expressed concern about "state-sponsored terrorism," states using the threat of terrorism as an excuse to overthrow governments they feel are hostile to their goals, and cited Iraq and Afghanistan as the prime examples of "state-sponsored terrorism."

¶15. (U) India, which originally proposed the CCIT, championed speedy conclusion of the CCIT, both publicly and in bilateral meetings. In their plenary statement, they stressed that "(n)o cause can ever justify terrorism," expressed optimism that an agreement on the Convention would be reached soon, and called on all delegations to "seriously examine the proposals before us." In informal consultations, they indicated they supported the 2002 coordinator's text, but stated that the coordinator's 2007 proposal deserved serious consideration. They supported waiting to hold the HLICT until after conclusion of the CCIT.

¶16. (U) China indicated that it could live with either the 2002 coordinator's text or the 2007 coordinator's text.

U.S. POSITION

¶17. (U) Cliff Johnson addressed the Committee for the USG on June 29. He stated that the U.S. remained supportive of a CCIT "that would strengthen the existing international counterterrorism legal regime and reinforce the critical principle that no cause or grievance justifies terrorism in any form." He emphasized that the United States saw the CCIT as a law enforcement tool that must be predicated on a shared and clear understanding of two principles: (1) that the CCIT cannot provide a pretext for terrorist groups to claim their criminal acts are excluded from the scope of the convention in the name of national liberation, resistance to foreign of occupation, or any other justification or motivation and (2) that, as with prior counterterrorism conventions, the CCIT should not reach state military action, which is subject to other regimes. He noted that these issues had been successfully and consistently dealt with in five previous counterterrorism instruments, and stated that the USG had not "been persuaded that there are deficiencies that need to be remedied in this standard language that the international community has adopted five times before." At the June 30 session, Peter Gutherie reiterated the long-standing USG view that consideration of a HLCIT would be appropriate only after work was completed on the CCIT. Otherwise, such a conference risked divisive and unconstructive divisions among states in their perception of and efforts to combat terrorism rather than global cooperation and commonality in fighting it.

ISRAEL

¶18. (U) Israel stated that the CCIT must reflect the firm resolve of the international community against any terrorism, in any form; any ambiguity was not acceptable. The CCIT must also reflect the basic moral and legal principle that the murder of innocents can never be justified. While the 2002 coordinator's text was most in line with their view, they were prepared to discuss "all new ideas." Finally, in Israel's view, any HLCIT should be conducted after an agreement by the Ad Hoc Committee.

Africa

¶19. (U) Senegal and Ghana urged countries to show flexibility on wording and to strive to reach an agreement as soon as possible.

COORDINATOR'S INTERVENTIONS

¶20. (U) Telalian remained a staunch proponent of her 2007 proposal for Article 18. In her report to the plenary on June 29 concerning bilateral contacts and informal meetings she held prior to the meeting, she stated that despite nine years of negotiation and "recognition among delegations that the negotiations are in a state of inertia," she detected "guarded optimism" that delegations might "begin to project periods within which the current process may be concluded." "A little push of goodwill and a realization that the twenty-fifth mile of the marathon has been reached might help the process move forward." She decried a persistent tendency "to hold on to previously held positions while signaling a willingness to remain engaged," and to "read specific situations, events and circumstances into the proposed text."

"Natural as that mindset might be for lawyers, it needs to be eschewed when involved in a legislative exercise of the type that we embarked upon," where "the essential role is to project principles."

¶21. (U) Telalian sought to "distill" "principles and points of convergence" as follows: (a) the draft convention is designed to serve as a law enforcement instrument, an instrument for ensuring individual criminal responsibility on the basis of an extradite or prosecute regime; (b) the draft convention cannot be viewed in isolation of other rules of international law, but as an additional building block in an already existing legal framework; (c) three existing legal regimes are implicated by the draft convention-law under the UN Charter, international humanitarian law, and international and national "security law" (which separates when administering justice the activities of the civil administration from those of the military)-and IHL in particular is not to be prejudiced by the draft convention, i.e., the draft convention is not intended to impose international humanitarian standards on States that are not otherwise bound by them or to supersede such obligations where they exist; (d) there is precedent in other counterterrorism instruments for excluding activities of armed forces during an armed conflict (but given the exclusion, consideration might be given to changing the work "comprehensive" in the draft convention's title); (e) such exclusions do not grant armed forces impunity.

CLOSING SESSION

¶22. (U) Talelian spoke first in the July 2 plenary on her consultations during the meeting and doggedly touted her 2007 proposal. She asserted: "There was no desire to revert to the pre 2007 position." She noted that her proposal was aimed at overcoming the impasse that had been reached and had to be understood as part of an overall CCIT package, and argued that "any attempt to slice the elements would mean affecting the overall balance that ought to be achieved. It is not in the spirit of the proposal nor was it the motivation behind it that it would be open to delegations to pick and choose which parts of the elements they found favorable and to discard those they disliked." Looking

forward to a "concrete outcome" in the fall, she argued that delegations should not be too concerned about alleged vagueness or ambiguities in her proposal, because the interpretation and application of the convention are the primary responsibility of the parties to the convention : "The words or terms which may appear vague, obscure and indeterminate will have their own dynamic and assume concreteness, clarity and determinacy in specific fact situations as relevant authorities assume their roles of interpretation and application. That is the functioning of law in society and it is happening now as we speak."

¶123. (U) In their closing statements, most delegations that spoke asserted that there is momentum in the process and expressed hope that agreement was just around the corner.

¶124. (U) Sweden spoke first on behalf of the EU. They stated that the CCIT should and would become a vital instrument in criminal prosecutions, but should not alter or create new obligations for countries under IHL. They said they were committed to reaching an agreement, welcomed the coordinator's efforts and reiterated that they were open to considering the coordinator's 2007 proposal seriously.

¶125. (U) Syria spoke on behalf of the OIC, and reaffirmed the OIC's commitment to the process of negotiations. Syria reiterated the OIC's previous (2002) proposal on the scope of the CCIT, but was "still willing to consider the coordinator's proposal."

¶126. (U) Brazil spoke on behalf of the Rio Group and stated that the coordinator's proposal was "a good basis for discussion." This sentiment was shared by Cuba; however, Cuba reiterated its view that legitimate political struggles aimed at self-determination should be exempted.

¶127. (U) Norway attached great importance to conclusion of the CCIT.

¶128. (U) India stated that given the increasing momentum within the Committee the time was right for formal adoption of the CCIT. Pointing to the 2002 text and 2007 Coordinator's proposal, they trusted that with the guidance of the Chairman and the collective wisdom of delegations final agreement could be reached. They urged member States to show flexibility to achieve their common goal.

¶129. (U) Argentina thanked the coordinator for her efforts, and said there was a need to make progress to finalize the CCIT.

¶130. (U) Russia noted (erroneously) that the CCIT had been under negotiation for 13 years. Russia believed it was time to move to conclusion and give terrorist organizations a clear message that the UN took the issue very serious and would do all in its power to bring groups that engage in terrorist activity to justice. Russia detected positive signals from the bilateral consultations held during the week, and was prepared to facilitate negotiations.

¶131. (U) Ghana stated that delegations need to trust the U.N. and fellow member-states to enforce the provisions of the CCIT in a reasonable way and not be concerned about latent ambiguity. Rather delegations should focus on the underlying principles of the document condemning terrorist activity. Ghana could support the 2007 Coordinator's proposal.

¶132. (U) The U.S. stated that it supports conclusion of a convention that condemns terrorism in all its forms and that it looked forward to working with the Chairman and other delegations toward that end.

BILATERAL MEETINGS

¶133. (SBU) The U.S. delegation met with Pakistan, Russia, India and Telalian in bilateral sessions to discuss the draft resolution and progress of the CCIT. Pakistan took a relatively moderate stance, and asserted that there was room

to meet a compromise with most OIC countries in Article 18. Pakistan did not offer any details of what the elements of a compromise might be, however. Further, it gave no indication that the Coordinator's 2007 proposal would be acceptable to the OIC and suggested that it needed modification.

¶34. (SBU) Consistent with what it had previously told USUN, Russia said that it wanted to get the CCIT completed and was willing to be very deferential to the agenda of other delegations in meeting this goal. The Russian representative also indicated that they refrained from openly supporting the 2007 Coordinator's proposal during the opening session due to our statement in support of the 2002 text.

¶35. (SBU) The Indian Deputy Perm Rep told the USDEL that the OIC and others had understood the opening USG intervention as a clear rejection of the 2007 Coordinator's proposal. He pressed the USDEL hard to urge the Chair to "take the bull by the horns" and move the process forward by, for example, issuing a Bureau text. The Indians made clear that they would be happy with either the 2002 or 2007 texts, and that, if the USG is not prepared to accept the 2007 proposal, wanted us to put forward an alternative, e.g. returning to the 2002 text perhaps with some preambular language giving a nod to the OIC position. They did not seem inclined to introduce an alternative to the 2007 proposal themselves.

¶36. (SBU) Telalian stated that she believed the OIC was ready to make some concessions on the text, but wanted to maintain a united front until someone else (presumably the USG) made the first move. She stated that she believed her proposal was reasonable and that it represented a "package" proposal that was not subject to modification. Furthermore any concerns about ambiguity would be effectively dealt with by courts in an appropriate manner. She called on the U.S. to make statements in support of her text to rally support within the Committee as a whole.

¶37. (SBU) Comment: Despite the rhetoric, there were no concrete signs that the OIC had moved off positions that have stymied conclusion of this Convention for the past eight years. Likewise, European interest in the Convention seems to have waned and few countries seemed (with the significant exception of India) to view its conclusion as a priority. The OIC reiterated its position that certain acts which would otherwise be covered by the CCIT should be excluded from the scope of the CCIT because they are undertaken in the name of national liberation. This position not only runs contrary to USG interests, but also to the universally accepted principle that no cause or purpose justifies terrorism. OIC countries similarly questioned text adopted in five previous counterterrorism conventions that excluded State military conduct from their scope. While there is renewed political momentum to conclude the CCIT, a "compromised" CCIT will undercut the existing international counterterrorism legal framework that has been steadily built up by the United States and its allies over the past two decades through the conclusion of 16 sectoral specific international conventions.

As such, the U.S. participants stressed throughout consultations that any resolution will only be worthwhile if the result is a Convention that makes a meaningful addition to this framework and respects the approach taken in other conventions of excluding state military actions from its scope while ensuring that terrorist acts of national liberation movements are included within the scope of the CCIT.

¶38. (SBU) While a number of delegations are looking to the United States to take the lead in resolving the present impasse, it is far from clear that such a role would actually result in a satisfactory text rather than a new baseline from which OIC countries and others would seek further compromises. Looking ahead to the late summer and fall, the USG will need to assess whether the benefits of entering into this convention is worth further concessions. If so, the Department should consider whether the USG could accept the

2007 Coordinators proposal (or another alternative) as a final compromise and, if so, how best to create the conditions for such a solution to emerge in the negotiations in a way that lead to its adoption rather than further OIC demands for concessions. End comment.

RICE